

**Draft Research Report to the Acting Assistant
Director Highways and Transport**

**Application for a
Definitive Map Modification Order to**

**Add a Bridleway to the
Definitive Map and Statement in the
Parish of Stoke Prior**

[REF: M341]

Public Rights of Way
Balfour Beatty Living Places
Thorn Business Park
Rotherwas
Hereford
HR2 6JT

July 2019

EXECUTIVE SUMMARY

Herefordshire Council is the surveying authority for rights of way and has a duty under section 53 of the Wildlife and Countryside Act 1981 (WCA) to keep its Definitive Map and Statement under continuous review and to modify it by Order where evidence is discovered which shows: -

- That a route not recorded in the map and statement should be so recorded
- That a route of a particular description ought to be recorded with a different description
- That a route currently recorded is not a right of way and ought not to be shown at all

An application submitted in January 2019 by Humber, Ford and Stoke Prior Parish Council seeks to add: -

A public bridleway from the county road C1110 to the northern end of Bridleway SP12, Stoke Prior.

A certificate of service of notice on the landowners was received from the applicant at the same time. The route applied for is shown on the plan at **FIGURE 1** of this report.

The application was supported by some historic documentary evidence and 15 user evidence forms purporting to indicate that the route in question has public rights which should be recognised and recorded on the Council's Definitive Map and Statement as a consequence of an event specified in WCA s53(3)(c)(i): -

“The discovery by the authority of evidence which, when considered with all other relevant evidence available to them, shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54a, a byway open to all traffic”

WCA s53(3)(b) sets out the triggering event where user based evidence is provided:-

“The expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway”.

The Highways Act 1980 section 31(1) provides for a statutory period of use: -

“Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”.

Section 31(2) states: -

“The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is

brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise”.

Evidence of the existence or non-existence of a public right of way in the form of documentary evidence, must be weighed and this is a matter of judgement in each case. It depends upon such matters as the antiquity of the document, the status of the person by whom it was compiled, the purpose for which it was prepared and the custody in which it has been kept and from which it is produced.

Evidence of actual use by the public is investigated to establish the period of time involved and the manner in which the route is used.

The Council is under a duty to consider all other relevant evidence whether this is provided by the applicant or is contained within its own records or the records of others.

If highway rights existed many years ago, they still exist today on the common law principle of ‘once a highway always a highway’. Those rights cannot be taken away by any means other than statutory legal Order. The public cannot ‘give up’ their rights by lack of use and those rights cannot be denied, for example, by obstruction, no matter how long that might have been the case. Public rights can also be established by user which, at common law, could be any period of time or it can be measured by the statutory 20 year provision contained in the Highways Act 1980.

The available documentary evidence for this case is set out and evaluated in this report and would support, on the balance of probabilities, greater public rights than those solely on foot or horseback. Indeed the evidence supports this being part of the all-purpose highway network.

More recent legislative change in respect of this also needs to be explained.

Under the **Natural Environment and Rural Communities Act 2006 (NERCA)**, existing public rights for mechanically propelled vehicles have been extinguished if they are over a way which, immediately before commencement of the Act: -

- (a) Was not shown on a Definitive Map and Statement, or
- (b) Was shown in a Definitive Map and Statement only as a footpath, bridleway or restricted byway

The extinguishment of such rights was subject to a number of exemptions but none of these apply in this case. An exemption would have been triggered had the application been made before the relevant date set out in NERCA, which is 20th January 2005, to record the route as a byway open to all traffic. This application was submitted after that date (January 2019) and was, in any event, an application to record a Bridleway.

Therefore, whilst this is an application for a bridleway to be added to the Definitive Map and Statement, investigation suggests that this route has higher rights than that of bridleway which, before the advent of NERCA 2006, would have led to a recommendation that a byway open to all traffic should be added to the Definitive Map and Statement which would include public rights for mechanically propelled / motor vehicles.

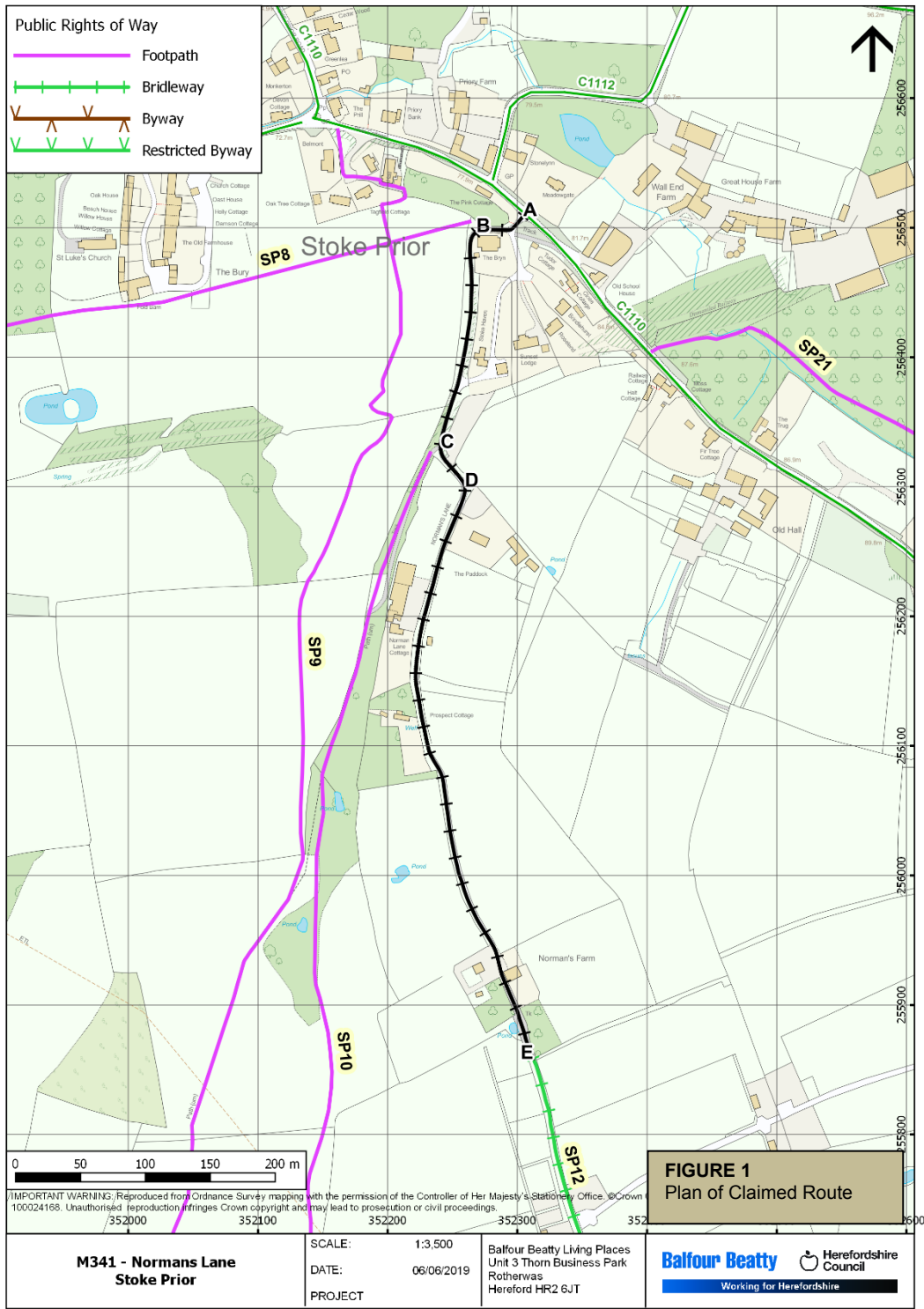
This application, however, meets none of the exemptions, so previously unrecorded rights for motor vehicles were extinguished by NERCA 2006 meaning that the route defaults to a Restricted Byway.

To summarise this, regardless of the claim being for a public bridleway to be recorded, the council is under a duty to address all the available evidence and if other rights are shown to exist on the balance of probabilities, it should make an Order to modify the Definitive Map accordingly. The evidence here points to this route having historic rights as a vehicular carriageway. NERCA 2006 extinguishes those unrecorded rights for mechanically propelled vehicles (as none of the NERCA exemptions apply) and the rights default to those of a Restricted Byway which gives rights to all types of user except for mechanically propelled (motorised) vehicles.

Accordingly it is concluded that the Council should make and advertise an Order to modify its Definitive Map and Statement to add a Restricted Byway along the route shown on the plan in **FIGURE 1** between points A, B, C, D and E.

DETAILS OF THE APPLICATION

1. On 14th January 2019 Stoke Prior Parish Council (the applicant) made an application in accordance with Section 53(5) and Schedule 14 of the Wildlife and Countryside Act 1981 to add this route to the Council's Definitive Map and Statement as a bridleway in the parish of Stoke Prior. This included a certificate of service of notice on the landowners.
2. The claimed route is locally referred to as Normans Lane and is described as running from the C1110 The Pink Cottage in Stoke Prior (Point A) to the northern end of Bridleway SP, Stoke Prior (Point E) at **FIGURE 1**. The total length of the claimed route is approximately 720 metres.
3. In support of the application the applicant submitted: -
 - 15 user evidence forms
 - Stoke Prior Tithe Map 1844
 - Worcester, Bromyard and Leominster Railway Plan and Session book 1861
 - Draft 1st Definitive map 1958
 - Register of Public Rights of Way 1952 Stoke Prior (typed)
 - Definitive Statement for Stoke Prior relevant date 1952
 - OS six inch 1885 map sheet XIX NE
 - OS six inch 1949 map sheet XIX NE
 - OS twenty five inch map sheet XIX4
 - OS twenty five inch 1928 map sheet XIX4
 - 1910 Finance Act map Sheet XIX/8
4. This evidence, along with other evidence discovered, is examined in this report.



DESCRIPTION OF THE ROUTE

5. The claimed route starts at the County Road C1110 at point A (**Photograph 1**) on the attached plan. At this point the track provides access to a number of properties and it made up of a sealed tarmacadam surface. The route bears round to the west before turning south at point B (**Photograph 2**). At this point the track is made up of an unsealed compacted stone and earth surface



6. Between points B and C the route runs through a deep cutting, approximately 12-15 feet in depth, below the line of the old railway. At this point the track narrows and is bordered either side by natural rock (**Photograph 3**). The track is made up of compacted stone, rock and shows evidence of regular repair.



7. At point C, where the route meets Public Footpath SP10 (**Photograph 4**), a wooden finger post has been installed indicating a bridleway following Normans Land and the public footpath SP10 (**Photograph 5**)





Photograph 5

8. The route chicanes between points C and D and at D it meets the private access track to The Paddocks (**Photograph 6**).



Photograph 6

9. Between points D and E the track is made up of compacted stone, brick, concrete and soil and there is considerable evidence of adhoc repairs to the surface (**Photograph 7**). The route serves as vehicular access to a number of properties, namely Normans Lane Cottage, Prospect Cottage and Normans Farm. The

width varies between 3-4 metres and is bounded by hedgerows and fencing. There is evidence of waymarking along the route. (**Photograph 8**)



10. The route enters the farmyard at Normans Farm (**Photograph 9**) and then runs to the east of the Farmhouse before entering an enclosed track behind the farm complex. The track is bordered by a post and rail fence and is approximately 3 metres in width. The surface is grass and earth.



Photograph 9

11. At point E, the claimed route meets Bridleway SP10 at a Bridleway gate. **(Photograph 10)**. The gate is waymarked on both sides and a sign affixed to the gate states “Please Close The Gate”.



Photograph 10

12. Along the full length of the route, there is evidence of usage by vehicles, equestrians, walkers and at one point there appeared to be bicycle tyre marks.

DOCUMENTARY EVIDENCE

13. Historical documents held at the Hereford Archive and Record Centre and at the Council's offices have been researched, including those referenced by the applicant.
14. Section 32 of the Highways Act 1980 sets out how any court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.

County Maps

15. In the 18th and 19th centuries map makers started to produce county maps. Individual surveyors saw an opportunity to produce small-scale maps of counties which could be purchased by individuals and were, effectively, the road atlases of their day. A surveyor was generally concerned to show on these maps only those routes which the traveller could use. These showed features such as turnpike roads, cross roads and lanes and bridleways. They can be useful supporting evidence in rights of way claims.
16. This route features on only one of the commercially produced county maps of the 18th and 19th centuries which were inspected.

Henry Price Map 1817

17. Henry Price's map, (**FIGURE 2**), show many of the lanes and roads as shown on modern maps and still in existence today. They were based on 2-inch working drawings produced by Ordnance Survey in or around 1815 as well as on an actual survey that he undertook.
18. The claimed route is shown on Price's map in a similar way other routes in the area are shown

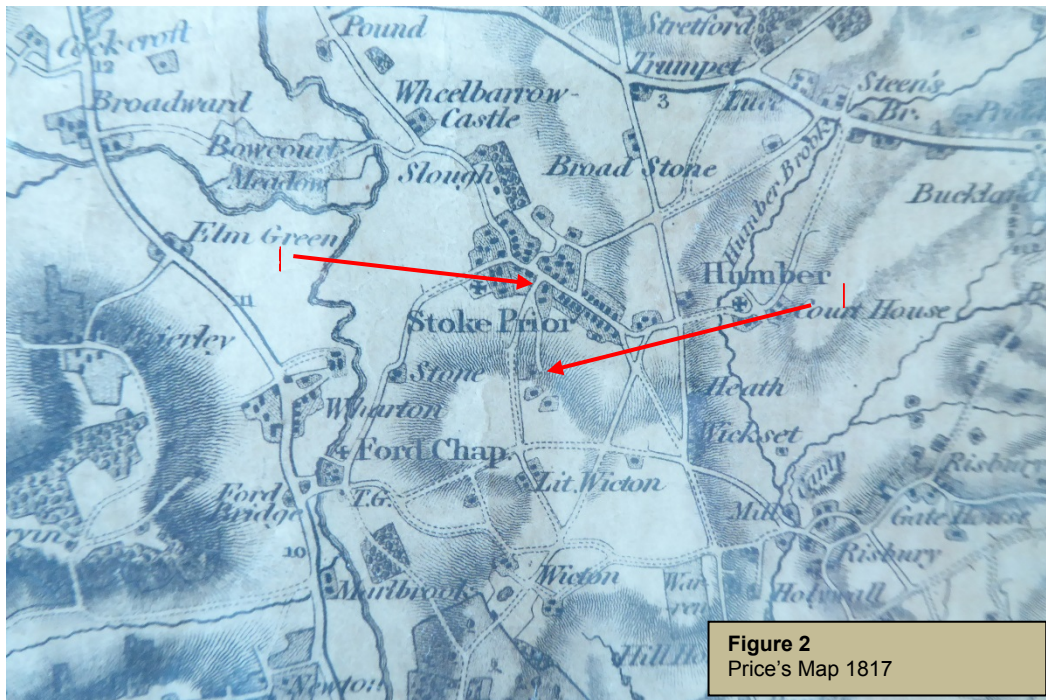


Figure 2
Price's Map 1817

Bryant's Map 1835

19. Bryant's Map, **FIGURES 3a – 3c**, a copy of which is held by the Record Office, is to the larger scale of 1½ inches to the mile and includes a key. He produced well-made maps – the Herefordshire map based on an actual survey carried out between 1832 and 1834 – as opposed to copying or plagiarising other maps. The Planning Inspectorate's Consistency Guidelines refer to Bryant's use of surveyors and a triangulation system.

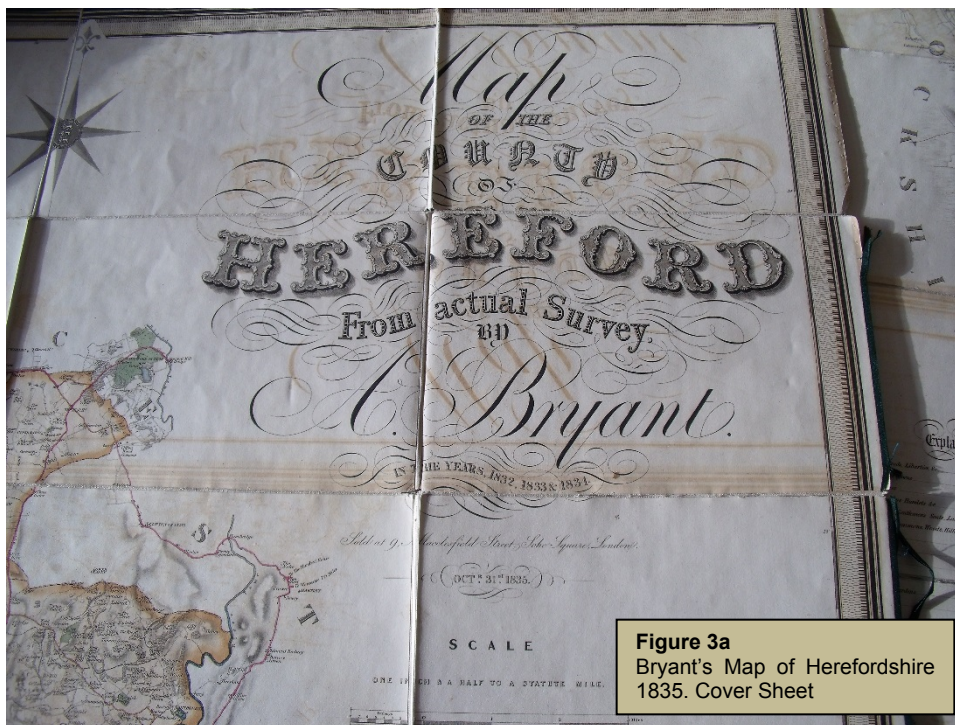
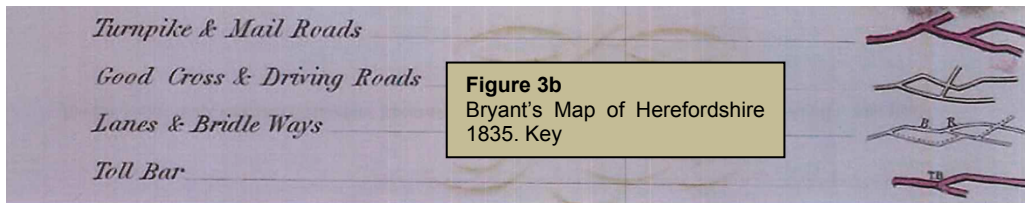
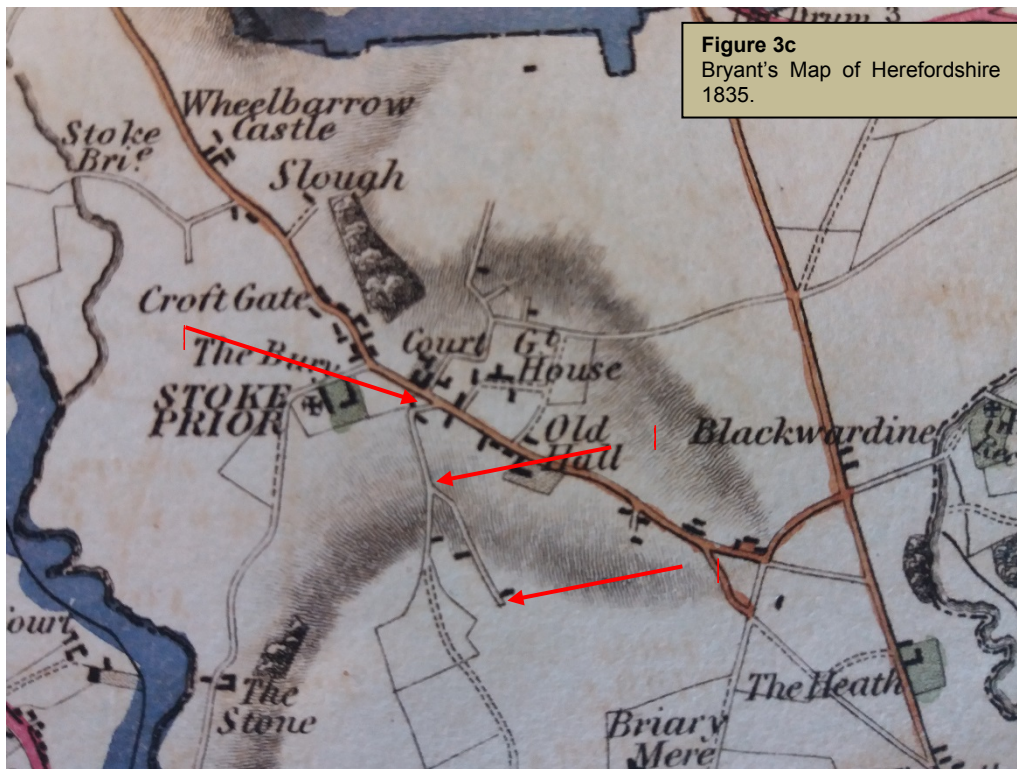


Figure 3a
Bryant's Map of Herefordshire
1835. Cover Sheet



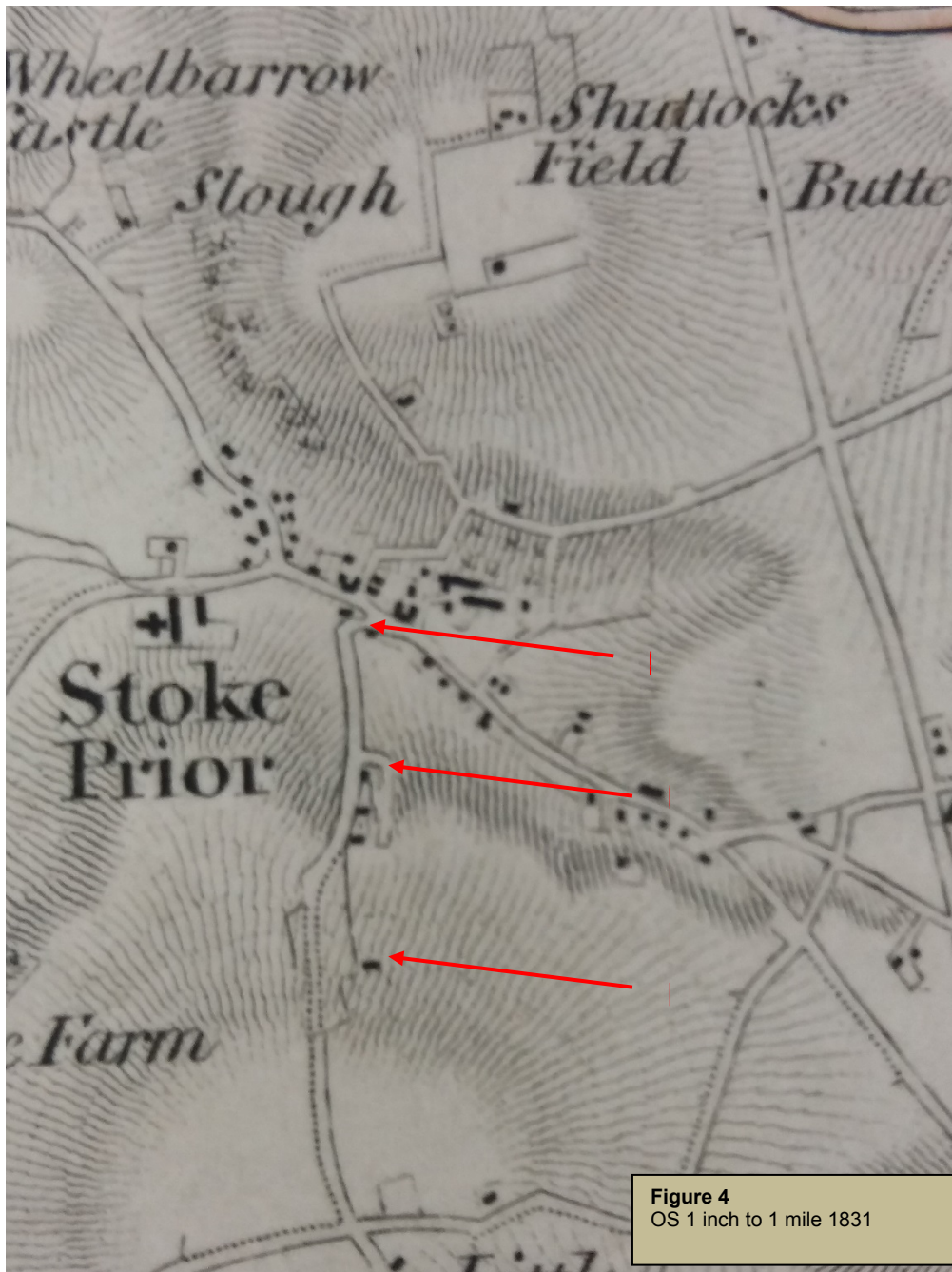
20. The claimed route is shown as a 'Lanes & Bridleways' (**FIGURE 3C**). The route is not shown as a through route and it is not clear if it terminates at or before Normans Farm. Therefore point E, in this instance, should be regarded as approximate



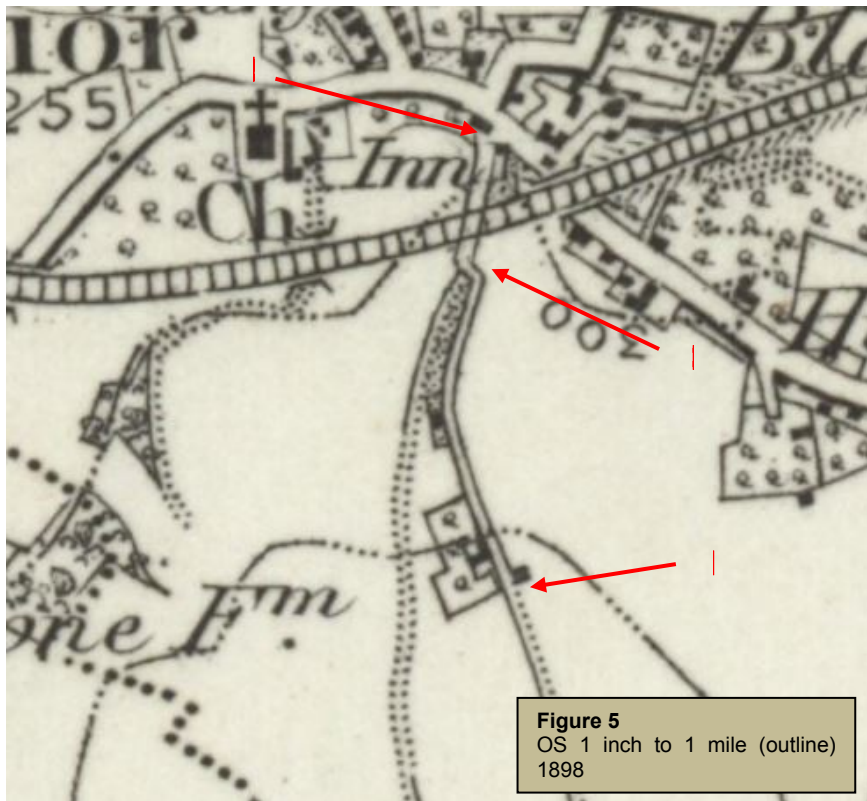
21. A number of other county maps, including Carey, Greenwood, C. Smith were checked but the claimed route is not shown.

Ordnance Survey Mapping

22. The large-scale Ordnance Survey Plans are very valuable as they accurately record the topographical features that were present at the time of the survey. However they also carry the disclaimer that the showing of a road, track or path is not evidence of the existence of a public right of way.
23. The 1831 Ordnance Survey map of 1 inch to 1 mile scale (**Figure 4**), published by Lieutenant Colonel Colby of the Royal Engineers appears to show at least part of the claimed route.



24. The 1898 OS one inch to one mile map sheet number 198 (outline) (**Figure 5**) shows the claimed route as an enclosed track. It is interesting to note that the map shows the rail crossing point as level crossing. Considering the landscape this is unlikely to be the case and is probably a drafting error.



25. The Second Edition twenty five inch to one mile of circa 1904 map sheet XIX.8, (**FIGURE 6**), clearly shows the claimed route as an, enclosed track. The map shows the crossing point between the track and the railway line as a bridge with the railway crossing over the track. This is more in accordance with the landscape and the evidence on the ground.

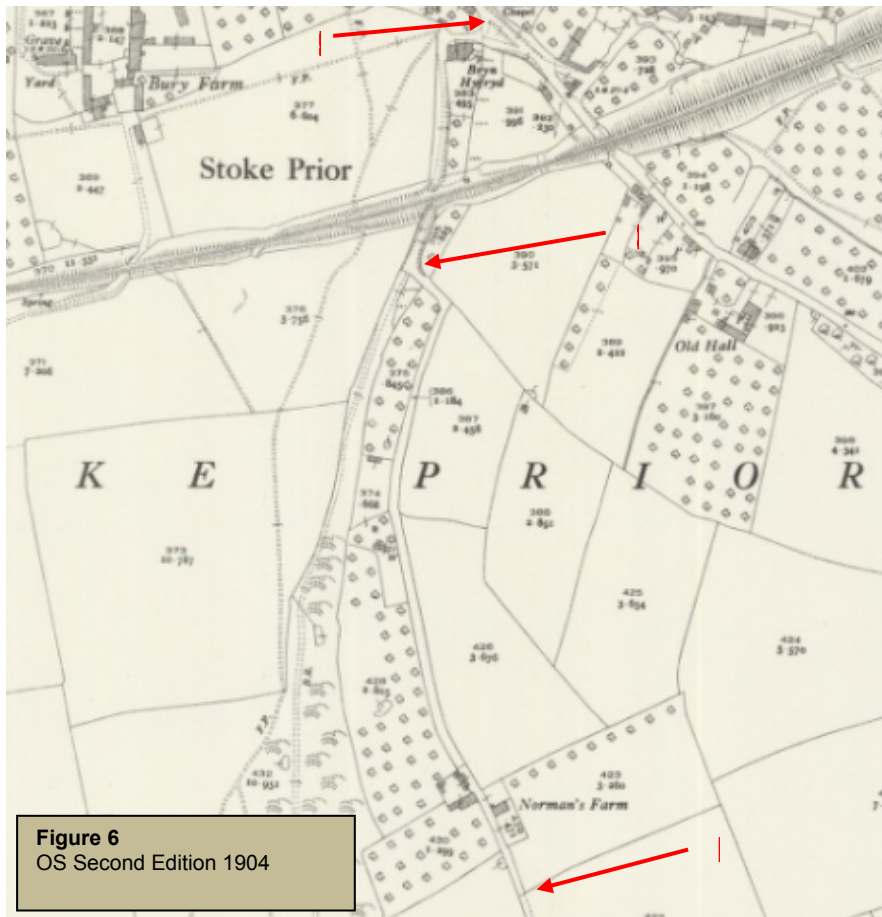


Figure 6
OS Second Edition 1904

26. The 1928 edition OS twenty five inch map sheet XIX.8, **FIGURE 7**, shows the same detail as the second edition map

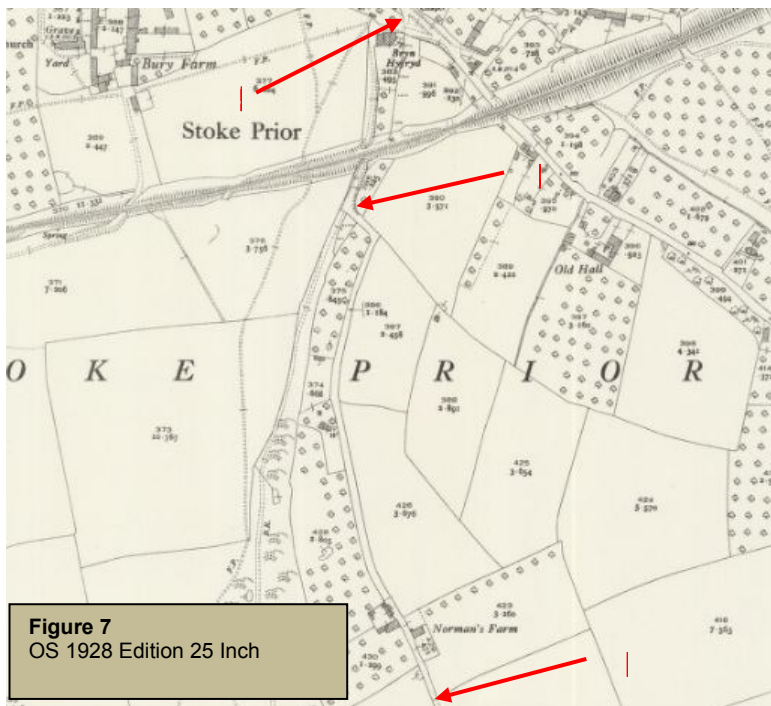
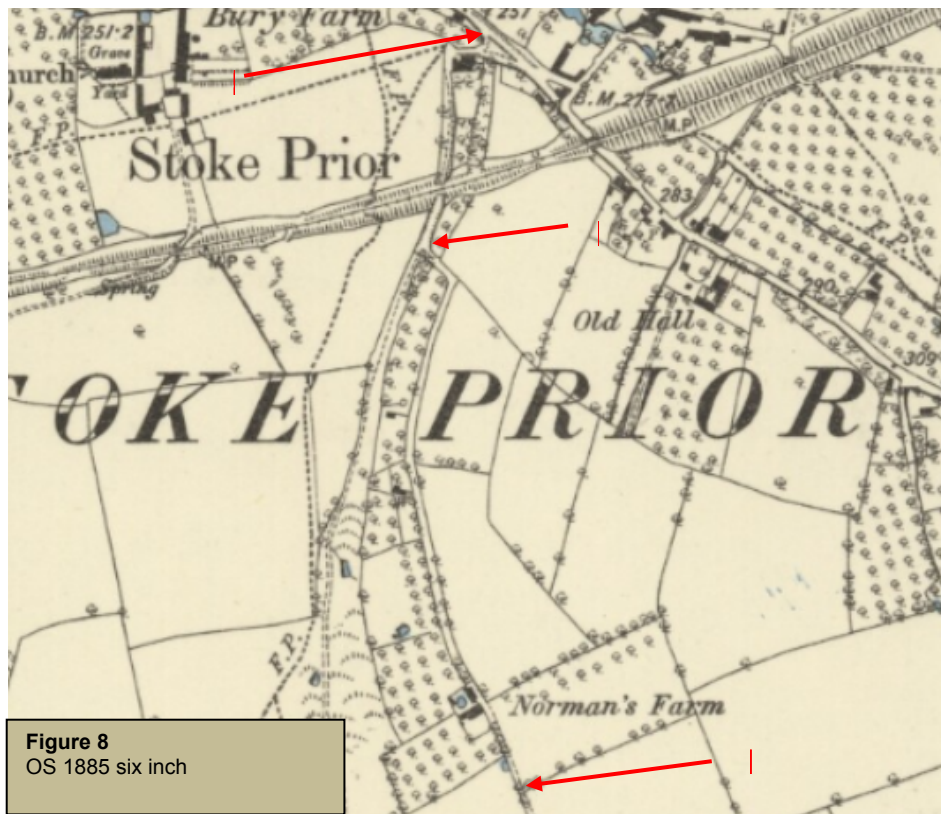


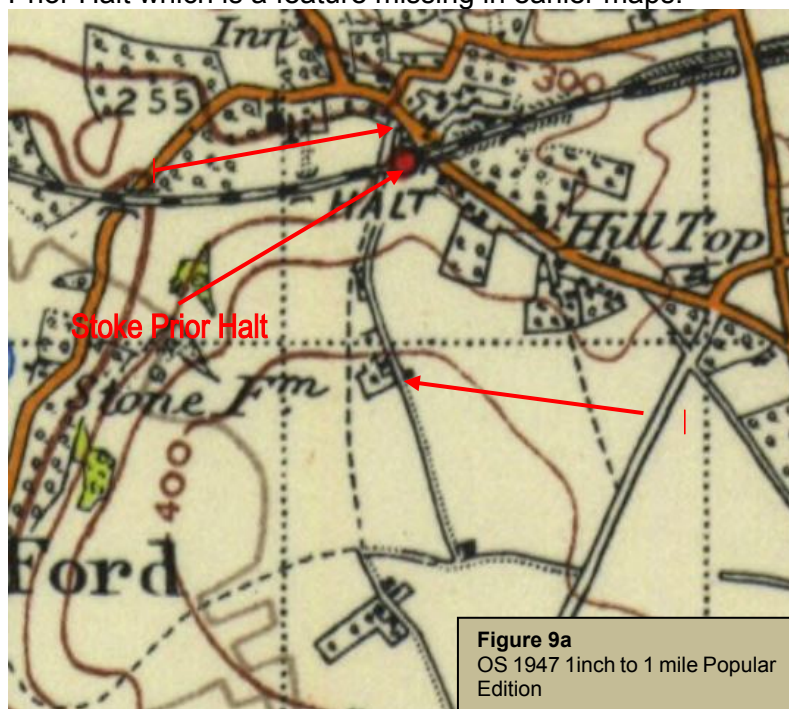
Figure 7
OS 1928 Edition 25 Inch

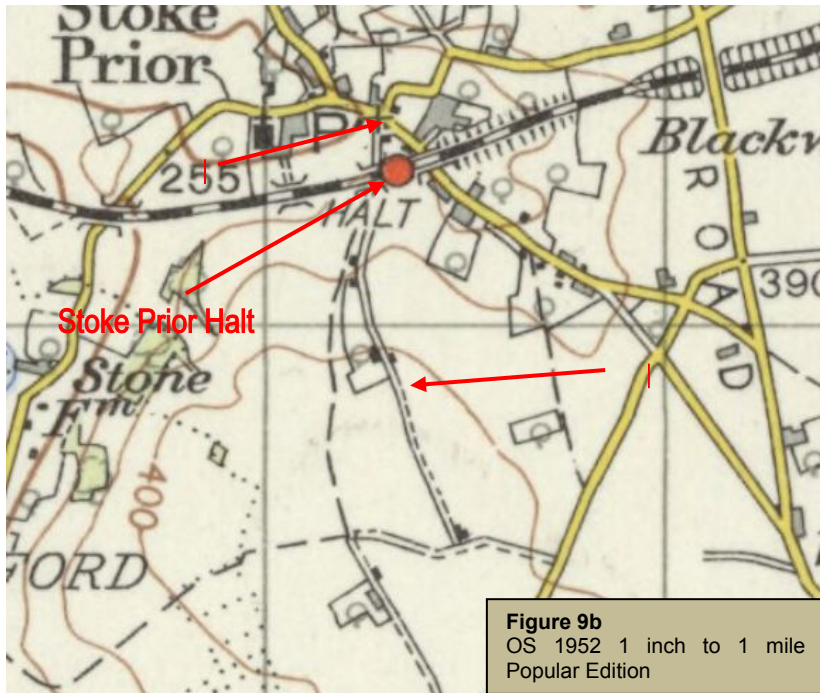
27. The First edition of the OS 6 inch map sheet number XIX NE 1885 (**Figure 8**) shows the claimed route as an enclosed track



28. The OS six inch maps published in 1905, 1930 and 1953 were all checked and show the claimed route in an identical position as shown in the map above.

29. The OS one inch to one mile provisional popular edition 1947 (**Figure 9a**) and the 7th series (**Figure 9b**) are useful in that they both show the location of Stoke Prior Halt which is a feature missing in earlier maps.





Tithe Map

Tithe Maps and Apportionments

30. Traditionally, tithes were one tenth of a farmer's annual produce which was taken to support the Church. Under the Tithe Commutation Act of 1836, this was converted to a money rate, which was simpler to administer. In each parish, Tithe Commissioners were appointed to oversee a survey to assess the productive value of each field, and a map and schedule were drawn up to record the results of the survey. Each field was given a reference number on the map which referred to an entry in the schedule. Although not directly concerned with Rights of Way, important inferences can be made from the Tithe maps and accompanying apportionments and schedules: for example, roads are frequently excluded from the tithable area because they were considered not to produce a tithable crop.
31. The original maps and apportionments, sealed and approved by the commissioners were retained by the Tithe Commissioners, and are now kept in the Public Record Office. Two other copies were ordered to be made, one lodged with the parish and one with the Diocese.

Stoke Prior Tithe Map 1844

32. The applicant submitted a document entitled 'an extract of the Microfiche Stoke Prior Tithe map dated 1844' (**Figure 10**). The extract has been re-produced but is still in poor a condition but the claimed route is still visibly set out between solid lines in a manner similar to other routes in the area. It is important to note that the portrayal of roads was incidental to the main purpose of tithe maps which was the recording of tithable land. Whilst the roads are not numbered or otherwise referenced, they are shown and in a way that is clearly recognisable today.

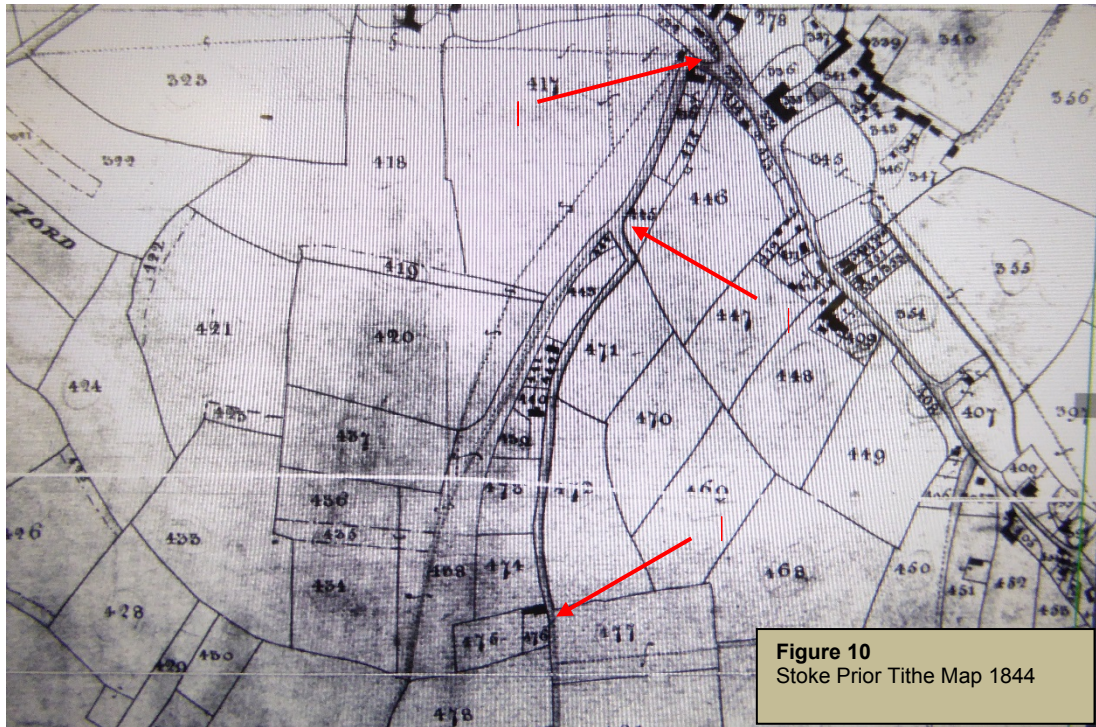


Figure 10
Stoke Prior Tithe Map 1844

33. The apportionments accompanying the map were checked and although no reductions or notes were made in relation to the lane, apportionments 441, 442, 393, 406, 440 and 444 all came under the area heading of “Norman Lane” indicating it was a distinct area and a recognisable feature at the time. (Figures 11a and 11b).

		860	2 ^d	2 ^d	Meadow
		840	In	Madle Cotatch	Hoys
		839	Far	Cotatch	Meadow
		766	Upper	Mullen Meadow	Meadow
		770	Lower	2 ^d	Meadow
		603	The	Normans	Varsery
				Norman Lane	
	Elizabeth Hady	441		Cottage and Garden	
				Norman Lane	
	Jones Humphreys	442		Cottage and Garden	
Starr Thomas	Elizabeth Hughes	393		The bare brechard	brech? Pasture
	John Duckham	440		Cottage garden etc.	brech? Pasture
				Hoys	
Smith William	In Hand	299		Cottage Garden & Hoys	
				Butterery	
Smith Mary	William Irons	112		House and	
		113		brechard	
				Church	
Smith Elizabeth	In Hand	298		Hornstead	
		300		brechard etc.	

Figure 11a
Extract from 1844 Tithe Apportionment

James Thomas	In Hand	260	Homestead
		262	Lower Meadow
		261	The Block
		30	In the Valley Arnold's co
		259	Meadow behind the 4
		320	Opposite Stoke Court
			Stoke
	Susan Greenwood	348	Cottage and Garden
	Meadow Cugh.	331	Cottage and Garden
Strong Lane	John Perry	270	Norman Lane
			Cottage and Garden
			with small Garden
			Stoke
Staples Thomas	In Hand	353	Cottage and Garden
Staples James	In Hand	253	Stoke
Staples Thomas	Thomas Green	302	60

Figure 11b
Extract from 1844 Tithe
Apportionment

Finance Act 1910

34. The Finance Act 1909 - 1910 provided for the levying of a tax upon the incremental value of all land when sold. The plans were based on Ordnance Survey maps and show the land assessed. The valuation book includes details relevant to the valuation, and shows if any deductions were allowed for rights of way across the plots of land.
35. The maps were prepared using the printed 1904 edition of the 1:2500 scale Ordnance Survey plans as the base map, onto which plots and plot numbers were marked.
36. The applicant submitted an extract from the 1910 Finance Act Map of the area. A section of the map, **FIGURE 12**, shows the claimed route excluded from the adjoining, coloured hereditaments, in the same manner as all other recognisable public roads. Such depiction would usually be consistent with the route having highway status. The route is bounded by coloured and numbered hereditaments that would have been subject to the tax. One of the hereditaments, number 148, has land both sides on the route in question and this is indicated by the 'bracing' connecting the two segments of land either side of the road into one hereditament. This, as opposed to the road being incorporated within the hereditament, which then would have been subject to tax.

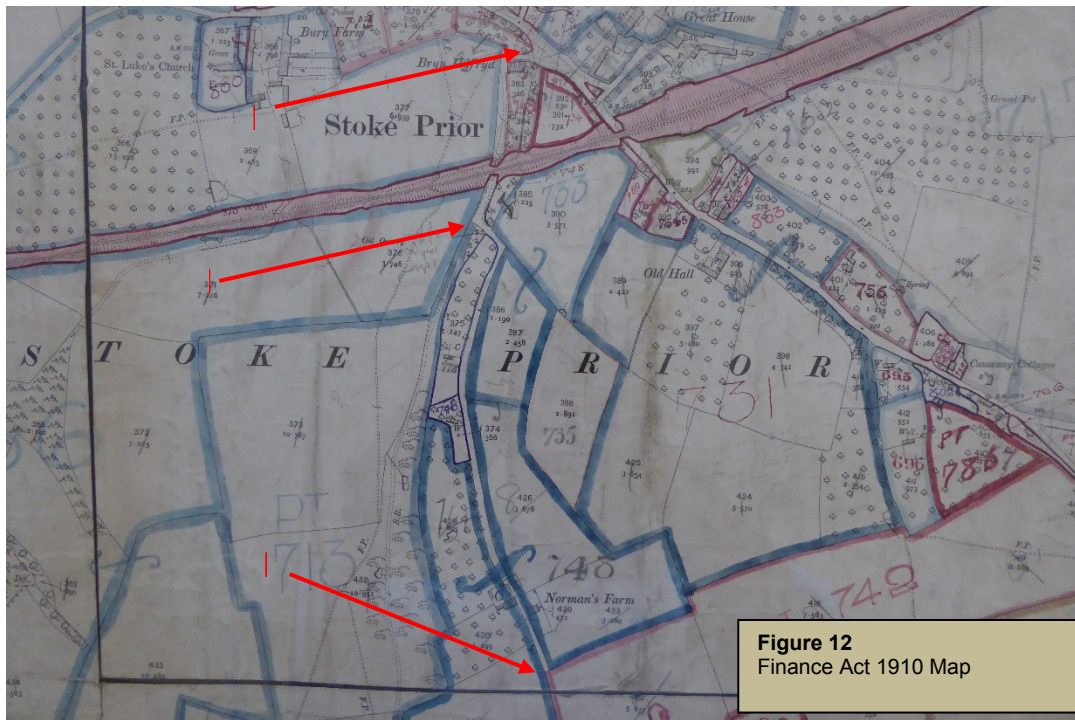


Figure 12
Finance Act 1910 Map

OTHER PLANS, ETC

Worcester, Bromyard and Leominster Railway Plans and Book of Reference

37. Railway plans are regarded as strong evidence of the line and status of public rights of way. The proposed plans required a private members bill and royal assent before the compulsory purchase of land could be carried out. To this effect, the public were given the opportunity to scrutinise and comment on the plans. Companies were required to submit detailed plans setting out the proposed route including cross sections of the land. It is highly unlikely the railway company would have set out existing tracks in the wrong place or labelled them private when they were public and vis versa. The plans had to be accompanied by a book of reference which contained details of the parcels of land affected by the line of the railway. The book of reference also contained details of the owners of the properties affected. Much the same process is used today so the process can be regarded as robust and having stood the test of time.
38. Herefordshire County Record and Archive centre holds a copy of the plans and book of reference for the Worcester, Bromyard and Leominster Railway. The plans were deposited with the Clerk of the Peace in November 1860.
39. The **Worcester, Bromyard and Leominster Railway** was a 24.5-mile single track railway line, that ran from Worcester through to Bromyard and onto Leominster. There was a halt at Stoke Prior, believed to be between Normans Lane and the County Road C1110. The proposed line received Royal Assent on 1861. The line and stations were completed in 1884 and the line was operational until 1952 when it was shut down.
40. The deposited plans show the line of the railway crossing the proposed route at points C and D. (**Figure 13a**). (A north arrow was not included on the plan but has been added to help with alignment). The plan shows the claimed route as

land parcel no. 70 which is described in the Book of Reference as an “Occupation Road” (Figure 13b). The cross section of the land (Figure 13c) shows the claimed route a level area, slightly cut in from the adjoining land and described as “Public Road. Level unaltered”. Figure 13d shows the plan and cross section in relation to each other

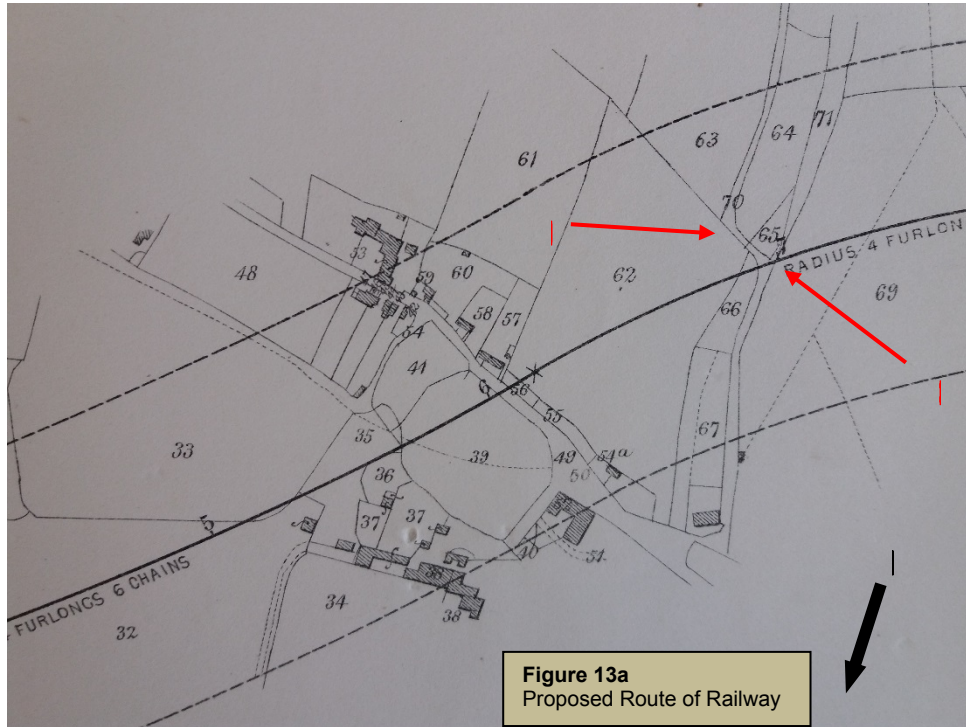
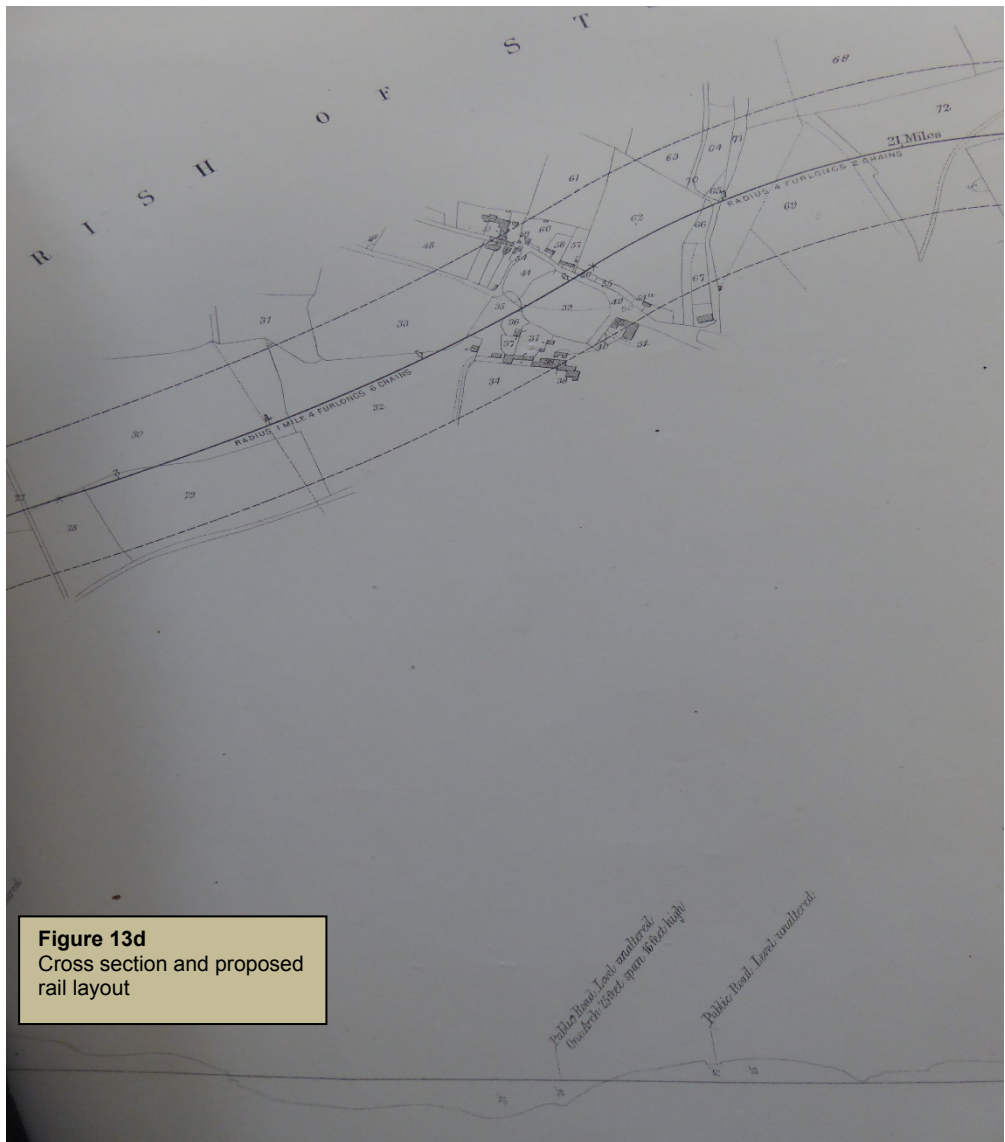
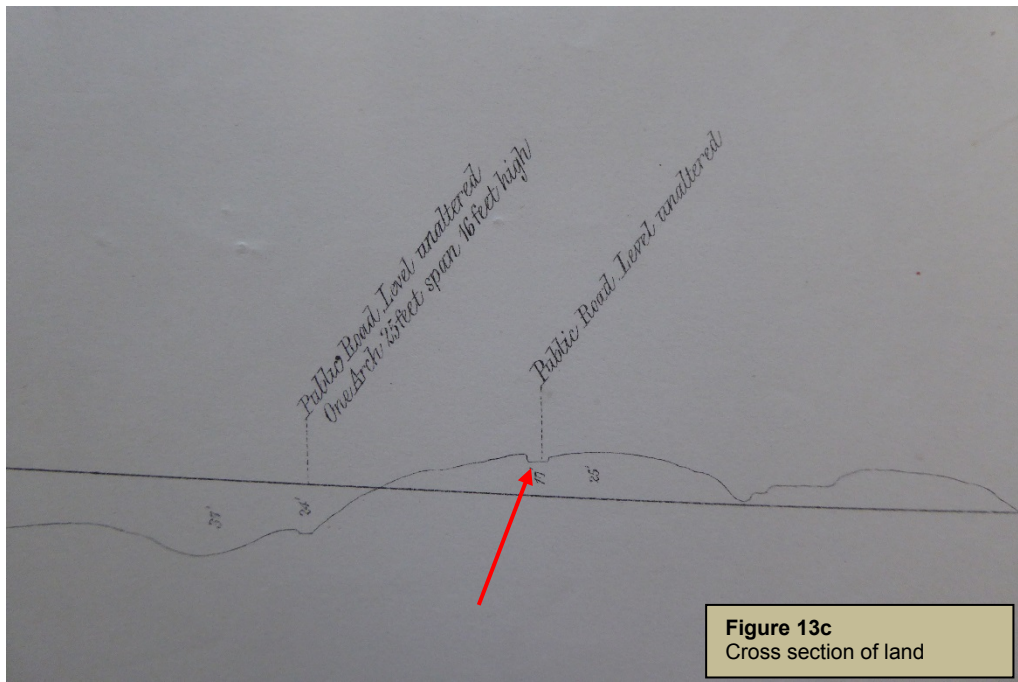


Figure 13a
Proposed Route of Railway

Parish of *Stoke New* in the County of *Hereford*

No. on Plan	Description of Property	Owners or reputed Owners	Lessees or reputed Lessees	Occupiers
66	Orchard and pasture	Mary Kipple		Edward Lewis
67	Orchard and Pasture	Mary Kipple		Edward Lewis
68	Walls and Public footpath	Penelope James Abigail Pitt and James of Highways		Richard Crump
69	Pasture and public footpath	Thomas Brayen and James of Highways	William Henton	William Henton
70	Occupation Road	Richard Crump Thomas Brayen Mary Kipple		Richard Crump Edward Lewis William Henton
71	Pasture	Penelope James Abigail Pitt		Richard Crump
72	Pasture Pond and Occupation Road	Thomas Brayen	William Henton	William Henton

Figure 13b
Extract from Book of Reference



41. Further investigations were carried out to identify the location of Stoke Prior Halt. This was potentially an important piece of evidence. If Normans Lane had been used to access the halt, it would have given considerable weight to the argument that it was used as a public right. As shown in Figures 9a and 9b above, the halt was located between Normans Lane and the County Road C1110. The exact location is not known but further correspondence with the applicant appears to place the Halt close to the crossing point on the C1110. Information provided by local people, who were resident in the village at the time of the railway, would indicate that access to and from the halt was from the County Road rather than Normans Lane.

Definitive map records

42. The council has been under a duty to hold a Definitive Map and Statement of Public Rights of Way since the introduction of the National Parks and Access to the Countryside Act 1949. In putting the map together, it invited all parish councils in the county to survey their areas and submit maps showing routes they felt should be included on the council's original draft map of public rights of way. This would then be the subject of consultation.
43. Although the definitive map and statement has never recorded public rights on Normans Lane, two routes, Public Carriageway or Cart Road or Green Lane mainly used as a Bridleway (CRB) 12 and Footpath 10 which connect to Normans lane were successfully claimed by the parish and have a bearing on the status of the route.
44. In 1951, Stoke Prior Parish Council produced a plan showing the routes they intended to put forward for inclusion onto the first draft Definitive Map (**Figure 14**). The map shows CRB 12 joining Normans Lane south of Normans Farm at point E and footpath 10 joining Normans Lane at point C.



45. Accompanying the plan are Parish Submissions (F.P.4) (**Figure 15a**) which provide a description of the routes put forward along with signatures of witnesses and declarations. In this instance the forms do not appear to have been signed by witnesses. The submission describes CRB 12 as:-

*“From:- BR (28) near Little Wicton To:- Normans Farm
 Leaves BR (28), through a FG. Thense clearly marked over 3 fields
 through easily opened FG. Then through FG [Field Gate]. to other side of
 fence & over field to FG into Lane by The ‘Normans’.”*

C O U N T Y O F H E R E F O R D
National Parks and Access to the Countryside Act, 1949 - Survey of Rights of Way.
SCHEDULE OF INFORMATION. SEPARATE COPY FOR EACH WAY TO ACCOMPANY MAP.

INFORMATION IN THESE THREE COLUMNS TO BE FILLED IN BY THE PERSONS SUPPLYING THE INFORMATION AND ALL ANSWERS TO BE COMPLETED IN FULL.

(1) DESCRIPTION OF RIGHT OF WAY	(2) REASON FOR STATEMENT THAT WAY IS PUBLIC (Delete words not applicable)	(3) DOCUMENTS & RECORDS CONSULTED AND/OR NAMES AND ADDRESSES OF WITNESSES.
No. of Way on map <u>12</u> Type <u>F.P.</u> or B.R. or C.R.F. or C.R.B.) Please cross out 3, see Note 1 (a) below. From: <u>BR (25) near Little Wickton</u> To: <u>Normans Farm</u> Via (this should be a written description of the route shown on the 6in. map, and related to recognisable points on the plan, with distances in yards and direction by compass points): <u>Leaves BR (25) alongside cottage near</u> <u>to Little Wickton, through a F.G. fence clearly marked</u> <u>over 3 fields through easily passed F.G. then through</u> <u>F.G. to other side of fence & over field to F.G.</u> <u>into lane by the Normans.</u>	(a) Inclosure Award. Yes, / not known. (b) Deposited map by owners. Yes, / not known. (c) Proof of use to include— (i) Public use for 20 years. Yes, / No. (ii) Use as a Right (e.g. not private or or permitted use by owner). Yes, / No. (iii) Has the public use of the Way been <u>interrupted or obstructed.</u> Yes, / No. NOTE. The answers to (i), (ii) and (iii) above must all be "Yes" to prove the way public under (c), if neither (a) nor (b) above have been answered "Yes".	(a) If "yes" where is Award— (b) If "yes" where is map— (c) If "yes" to each, name and addresses of witnesses (preferably three) who will state this. State full particulars and location of any documents supporting (c)— To be filled in by persons completing the foregoing information. Signed _____ Address _____ Signed _____ Address _____
The <u>Stoke Prior</u> Parish Council / Meeting have considered the foregoing information and approve / do not approve _____ Date of Meeting: Signed <u>Shirley Brown</u> Date <u>14 June 51</u>	The <u>WIGMORE RD.</u> District Council have considered the foregoing information and approve / do not approve _____ Date of Meeting: Signed <u>H. H. GILLMAN</u> Date <u>127 JUN 1951</u>	

NOTE 1. These abbreviations may be used:— (a) Abbreviations of Type— Footpath - F.P. Bridleway - B.R. Public Carriageway or Cart L.
 (b) Abbreviation of Description— Cartridge - C.R. Footbridge - F.B. Stepping Stones - S.
 Rising Gate - R.G. Turstile - T. Sill - S. Direction Post - D. Hurdle - H. Post - P. Rail
 (c) Any information which anyone may wish to raise should be written on the back of this Fo
 (d) If space given above is insufficient to give any answer, continue on back.

ACCEPTED

Figure 15a
Parish Submission 1951 CRB 12

The reverse of the form (Figure 15b) states:-

“BR12 From Acc. Road S of Normans Farm
To B.R.28 at Brierymere”

BR 12. From Acc. Road, S of Normans Farm, near Top Ry, Br. 28, N.W. of Oak Hill
To B.R. 28 at Brierymere.

ACCEPTED

Inspected: 2/10/51
Graham
 Approved for draft Map
 7 Oct 1951
Chairman

Figure 15b
Parish Submission reverse 1952 CRB 12

A further submission (Figure 16a) describes Footpath 10 & 11 (footpath 11 was rejected)

“From:- Lane above Level crossing To:- Wickton Road
About 25 yds above the level crossing at Stoke Prior Halt the FP leaves
the lane through hurdle gate.....”

FP. 6

COUNTY OF HEREFORD

National Parks and Access to the Countryside Act, 1949 - Survey of Rights of Way.

SCHEDULE OF INFORMATION. SEPARATE COPY FOR EACH WAY TO ACCOMPANY MAP.

INFORMATION IN THESE THREE COLUMNS TO BE FILLED IN BY THE PERSONS SUPPLYING THE INFORMATION AND ALL ANSWERS TO BE COMPLETED IN FULL.

(1) DESCRIPTION OF RIGHT OF WAY	(2) REASON FOR STATEMENT THAT WAY IS PUBLIC (Delete words not applicable)	(3) DOCUMENTS & RECORDS CONSULTED AND/OR NAMES AND ADDRESSES OF WITNESSES.
No. of Way on map <u>10.11</u> Type (F.P. or B.R. or C.R.F. or C.R.B.) Please cross out 3, see Note 1 (a) below. From: <u>Lower level crossing</u> To: <u>Wickton Rd.</u> Via (this should be a written description of the route shown on the film map, and related to recognisable points on the plan, with distances in yards and direction by compass points): <u>About 25 yds above the level crossing at Silver Pass Halt the F.P. leaves the lane through a hurdle gate, for some considerable way, the ground is rough muddy and the path is difficult to follow for some 100 yds. It becomes clearer alongside hedge - field approaching B.R.(S) through a F.G. it enters a C.R.B. where it crosses 28 passing along in front of Little Wickton + a cottage through a gate by cottage through another F.G. into a field still the appearance of a C.R.B. a cut through a F.G. into Wickton Road.</u>	(a) Inclosure Award. Yes, / not known. (b) Deposited map by owners. Yes, / not known. (c) Proof of use to include— (i) Public use for 20 years. Yes, / <u>no</u> (ii) Use as a Right (e.g. not private or or permitted use by owner). Yes, / <u>no</u> (iii) Has the public use of the Way been interrupted or obstructed. Yes, / <u>no</u> NOTE. The answers to (i), (ii) and (iii) above must all be "Yes" to prove the way public under (c), if neither (a) nor (b) above have been answered "Yes".	(a) If "yes" where is Award— (b) If "yes" where is map— (c) If "yes" to each, name and address of witnesses (preferably three) who will state this. State full particulars and location of any documents supporting (c)— To be filled in by persons completing the foregoing information. Signed _____ Address _____ Signed _____ Address _____
The <u>Stoke Newington</u> Parish Council have considered the foregoing information and approve / do not approve. Signed <u>Richard Evans</u> Date <u>14 June 51</u>	The <u>Stoke Newington</u> District Council have considered the foregoing information and approve / do not approve. Signed <u>W. J. Hillman</u> Date <u>15 JUN 1951</u>	The <u>Stoke Newington</u> District Council have considered the foregoing information and approve / do not approve. Signed _____ Date _____

NOTE 1. These abbreviations may be used—
 (a) Abbreviations of Type— Footpath - F.P. Bridleway - B.R. Public Carriageway or Cart Road or Green Lane (which is used as Footpath, C.R.F. or as Bridleway - C.R.B.)
 (b) Abbreviation of Description— Cartbridge - C.B. Footbridge - F.B. Stepping Stones
 (c) Any information which anyone may wish to raise should be written on the back of this form
 (d) If space given above is insufficient to give any answer, continue on back.

Figure 16a
Parish Submission 1951 FP 10

The reverse of the form (**Figure 16b**) states:-
 "FP10 From Acc. Rd, 40 yds S of Railway Bridge 230 yds NW of Old Hall
 Hall"

FP10. From Acc. Rd 40 yds S of Railway Bridge 230 yds NW of Old Hall
 to County Road 40 yds NW of Lower Wickton.

FP11. From FP10 30 yds N. of Little Wickton
 to join FP9 20 yds NW.

NOT ACCEPTED
 3/1/52
 Not inspected
 2/1/52

NOT ACCEPTED
 FOR THE FOLLOWING REASONS
 Duplicate to a
 duplicate FP 9 and 10

Approved for Draft Map
 as above Oct. 1952
 CHAIRMAN

Figure 16b
Parish Submission 1952 FP10

46. The Parish Submissions are useful in that they consistently quote Normans Lane as an Accommodation Road. Although it does not expressly state Normans lane as being a public highway, it is unlikely the parish council at the time would have deliberately created a Cul-De-Sac. The description 'Accommodation Road' is often considered a term to describe a private road however this does not necessarily preclude there being public rights over it if it can be established that it has been used as a right by the public.

USER EVIDENCE

47. The applicant provided 15 completed user evidence forms, which can be broken down as:-
- Used on Horseback – 5
 - Used on Foot – 9
 - Used on Horseback and Foot - 1
 - Minimum time used – 2 times per year
 - Maximum time used – 350+ times per year
 - Average times per year – 56
 - Earliest recorded usage – 1975
 - Latest recorded usage – 2019 (date of application)
 - Maximum number of years used – 24
 - Minimum number of years used – 2
 - Average number of years used - 16
48. For the most part the users considered the route to be bridleway, although most of those referred only to their use as walkers. One referred to it a Byway Open to All Traffic or Restricted Byway and one has private access rights along the lane.
49. The period of usage ranges from 1975 to the date of the application in 2019, a total of 44 years. This provides useful evidence that the way has been in regular use by the public for many years and is highly valued.
50. No further evaluation of this evidence has been undertaken given the extent of the documentary evidence available but, nonetheless, it adds both a human and contemporaneous support to the application.

LAND OWNERSHIP

51. None of the route in question is registered with the Land Registry.

CONSULTATION

52. In January 2019, Humber, Ford and Stoke Prior Group Parish Council served Notice of the application on the adjoining owners / occupiers. These were at The Pink Cottage, The Bryn, The Paddocks, Stoke Haven, Prospect Cottage, Normans Lane Cottage, Normans Farm, Wallend Farm. Notices were also posted on site at the same time.
53. In June 2019, following a telephone conversation, the parish council submitted evidence of the position of Stoke Prior Halt which included extracts from a book, OS maps and verbal accounts from local residents.
54. On 3rd July 2019 a draft report was sent to the ten landowners adjoining the claimed route. Five landowners responded and included completed Landowner Questionnaires. Of these, 3 considered the route to be public whilst 2 considered it private. The landowners who considered the route private did not provide any evidence to support their claim.

55. The landowner of Normans Farm, whilst supporting the public status of the route, did raise concerns about the current heavy usage of the track and possible conflict between horse riders and vehicles. The landowner also considered the claimed route should follow the west side of the farmhouse rather than the east. This was investigated further, and whilst the location of the farmhouse changed between sometime between 1885 and 1904 from the east to the west side of the track the route has remained unchanged.
56. A draft report was also sent to Humber, Ford and Stoke Prior Group Parish Council on 3rd August who responded saying they noted the report and had no further comments.

CONCLUSION

57. Humber, Ford and Stoke Prior Group Parish submitted an application form under the Wildlife and Countryside Act 1981 to add Normans Lane onto the Definitive Map and Statement. Normans Lane is clearly set out on the ground and still regularly used by the public and as property access. The route is signed and waymarked as a Public Bridleway.
58. Old maps would seem to clearly and consistently show Normans Lane, usually as a through route.
59. Railway Plans show provision was made for the route and label it as a Public Road and Occupation Road.
60. Whilst this application was made by the parish council as a bridleway, a review of all the available evidence strongly supports the view that it has higher public rights, with no specific evidence that it is a bridleway.
61. Because the route is not currently recorded on either a List of Streets held by the Council or on the Definitive Map and neither was it claimed as a byway open to all traffic before the NERCA deadline of 20 January 2005, public rights for mechanically propelled vehicles were extinguished by NERCA and this route should correctly default to that of Restricted Byway and an Order should be made to add it to the Council's Definitive Map and Statement.

RECOMMENDATION

62. Herefordshire Council should make and advertise an Order to modify its Definitive Map and Statement to add a Restricted Byway along the route shown on the plan in **FIGURE 1** between points A, B, C, D and E.